

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARLIN E. JONES,

Plaintiff,

VS.

TERRY L. BURNS,

Defendant.

4:06cv3051

MEMORANDUM AND ORDER

This matter is before the magistrate judge pursuant to the Mandate issued June 3, 2009 by the Eighth Circuit Court of Appeals. Trial is set for Tuesday, October 20, 2009.

In light of the imminent trial date, the court has expedited its review of the plaintiff's filings of October 14, 2009 (Filings 124, 125 and 126), in which he continues to complain that he has been wrongfully denied appointment of counsel. Also, on September 21, 2009, plaintiff filed a "Notice" (Filing 114) advising the court and opposing counsel that, due to the number of witnesses involved and his professed need for legal advice, plaintiff would not be able to "participate in further proceedings without advice of counsel or appointment thereof." Plaintiff failed to appear for the October 6, 2009 final pretrial conference.

The plaintiff has been repeatedly advised, since at least December 2006, that he has no constitutional right to counsel in a civil matter and that counsel would not be appointed in this case. In July 2007, the plaintiff was cautioned that, in this court, all litigants who are proceeding pro se are bound by and must comply with the local rules and procedures of this court and the Federal Rules of Civil Procedure. (Filing 56). Plaintiff was specifically admonished in August 2007 that since he

will be proceeding without the assistance of counsel, it is his affirmative obligation to seek out and become familiar with the applicable Federal Rules of Civil Procedure so that he may gain at least some insight into the proper conduct of a lawsuit. The Federal Rules are freely available at any law library, and the plaintiff is expected to make a good faith attempt to follow these rules and the orders of the court.

(Filing 62).

The plaintiff has been articulate in his presentation of his claims to this court and to the Court of Appeals. On appeal, the Eighth Circuit "reject[ed] as meritless Jones's remaining arguments, including his contention that the district court abused its discretion in denying his motions for appointment of counsel[.]" *Jones v. Burns*, 2009 WL 1288864 at n.1, No. 07-3417 (8th Cir., May 12, 2009).

IT IS ORDERED:

1. Trial will commence on Tuesday, October 20, 2009 at 9:00 a.m. before the undersigned in Courtroom No. 6, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska, as previously ordered.

2. Plaintiff's Motion (Filing 124) seeking a ruling on his August 21, 2009 motion for court-appointed counsel is denied as moot. The court denied that motion on August 25, 2009 (Filing 112), and the Clerk of the Court mailed a copy of the August 25, 2009 order to the plaintiff at his address of record.

3. All other pending motions, including plaintiff's Motion for Summary Judgment (Filing 113), defendant's Motion to Strike Plaintiff's Expert Witnesses (Filing 121), and plaintiff's "Motion to Show Cause" (Filing 125) will be heard prior to the commencement of trial on October 20, 2009.

4. The Clerk of the Court shall mail a copy of this order to the plaintiff at his address of record.

DATED October 15, 2009.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**